

The CASE of *Edward Lisle* and *Francis Seymour*, Esqs;
Sitting-Members for the Borough of *Marlborough* in the
County of *Wilts.*

TH E said Borough is a Corporation by Prescription, and was further incorporated by the Name of Mayor and Burgesses, by Charter, confirming their former Privileges.

There has been in the said Borough Time immemorial a Common-Council, of which the Mayor is always one, and those who compose this Common-Council, being called Common-Council-Men, have been always chose out of the Town Burgesses by such Common-Council, and the Manner of Electing such Town Burgesses is first to have them proposed to, and approved by the said Common-Council, and then to have them proposed to, and chosen by a Majority of the whole Body of the Burgesses.

In 1721, *Edward Bell* by Virtue of the above-mentioned Powers, and according to the antient Usage of the said Borough (being one of those Burgesses) was chose a Common-Council-Man, with three Others, but he thinking the Attendance might be a Prejudice to his private Affairs declined being sworn in the Year 1723, and then he tendered himself to the said Common-Council, in the usual Form and Manner to be sworn a Common-Council-Man: Eight Common-Council-Men being then present, four of them (of which the Mayor was one) were for swearing him in, and the other four were against it; but the Mayor, according to the common Acceptation and Usage of the said Borough, having in Case of an Equality a Casting Vote, gave the same for the said *Bell*, who was thereupon sworn in a Common-Council-Man, and acted in that Capacity unimpeded; and in the Year 1727, he was unanimously chosen Mayor, and the Year after went through the annual Office of Justice of the Peace.

In the Year 1729, the Burgesses (who are unlimited) finding their Number very much reduced, thought proper to enlarge it, and eleven were proposed in Common-Council, according to the Usage and Custom of the said Corporation, and there being then nine Common-Council-Men present, five of which (whereof *Bell* was One, and the Mayor Another) approved of the Eleven then proposed, there being only four against it, and afterwards they were proposed to the whole Body of Burgesses in the usual Manner, and were Elected accordingly by a great Majority.

Some Persons being uneasy at the Choice of these Burgesses, resolved to attempt setting aside their Election, and an Information in Nature of a *Quo Warranto* was brought against *Bell*, as well as against several of the new Burgesses.

The Allegations were, that the Mayor, at the Swearing of *Bell*, had no Casting-Vote, and consequently *Bell* was not legally sworn a Common-Council-Man in 1723, and that he being one of the Five, who proposed the New Burgesses at the Common-Council in 1729. If he himself was not duly chose, and the Mayor's Casting Vote could be set aside, the Election of the New Burgesses was void; and Issues thereupon being try'd before Mr. Justice *Lee* at *Salisbury* Assizes in 1731, by a special Jury of the chief Gentlemen of *Wiltshire*, a Verdict was given for the Defendant *Bell*, that the Election was good, and Costs were allowed him; and as the other Informations brought against some of the New Burgesses were depending upon the Event of the Suit against *Bell*, and a Verdict having been given in his Favour, they dropt in Course.

Under this Verdict and Judgment the said *Bell*, and the new Burgesses have acted in a corporate Capacity ever since unmolested, and *Bell* was elected Mayor, at *Michaelmas*, 1733.

Now in order to give some Colour to the Petition of *Thomas Newnham* and *Benjamin Hays*, Esqs; complaining of an undue Election of the sitting Members; the latter End of last *Michaelmas* Term, a Motion was made at the Court of *King's Bench*, for a new Tryal on the above-mentioned Issue, adjudged, and acquiesced under for 4 Years; whereupon Counsel on both Sides attended, and the Court upon due Consideration of the Motion (Mr. Justice *Lee* being then present) unanimously adjudged, there was no Ground for a new Tryal.

13th May, 1717. This being a true State of the Facts as to the Tryal at Law, when it is considered, that there is a Resolution of the House of Commons, determining the Right of Election of Members to serve in Parliament for this Borough, to be in the Mayor and Burgesses of the said Borough only, which by the Act of the 2d of his present Majesty, "For the more Effectual preventing Bribery and Corruption," is invariable, and that the Point they go upon in the Petition is, that the Sitting Members were Unduly elected, by Persons who had no right to Vote; it must appear, that this Petition is calculated with no other View, than to divest the said *Bell* of the Office of Common-Council-Man, confirmed to him by a solemn Judgment of a Court of Law, to deprive the Mayor of his Right of having a Casting-Vote, which has been adjudged to be in him by a Verdict founded on Evidence upon Oath, and to set aside the Election of the Burgesses Chose in 1729, (the Validity of which, tho' Informations were brought, they would not venture to try) in hopes to set aside the present Election of the Sitting Members.

And

and what is likewise very remarkable is, that no Opposition was even talked of till within some few Days before the Election, when the Petitioners, who were entirely unknown to the Electors, came down from London, and who, on the Day of the Election, appeared as Candidates.

At which Election the Poll stood thus, viz.

Mr. Seymour 14
Mr. Lisle 14
Mr. Newnham 8
Mr. Hays 8

Two of the Burgesses made in 1729, voted for Mr. Hays, and one of them for Mr. Newnham, and were then thanked, and allowed by them as good Votes; nor was there any Objection then made to Mr. Bell's being the Legal Returning Officer.

In 1731, James Bell by virtue of the above mentioned Petition, was chosen a Common-Council-Member of the said Borough (being one of those Burgesses) was chosen a Common-Council-Member, with three Others, but he thinking the Attendance might be a Burden to his private Affairs declined being sworn the Year 1733, and then he rendered himself to the Common-Council, in the usual Form and Manner to be sworn a Common-Council-Member; Eight Common-Council-Men being then present, four of them (of which the Mayor was one) were for swearing him in, and the other four were against it; but the Mayor, according to the common Accustomed Usage of the said Borough, having in Case of an Equality a Casting Vote, gave the same for the said Bell, who was thereupon sworn in a Common-Council-Member, and acted in that Capacity unimpeded, and in the Year 1737, he was unanimously chosen Mayor, and the Year after went through the annual Office of Justice of the Peace.

In the Year 1739, the Burgesses (who are unlimited) finding that Number very much reduced, thought proper to enlarge it, and eleven were proposed in Common-Council, according to the Usage and Custom of the said Corporation, and there being then nine Common-Council-Men present, five of which (whereof Bell was One, and the Mayor Another) approved of the Eleven then proposed, there being only four against it, and afterwards they were proposed to the whole Body of Burgesses in the usual Manner, and were elected accordingly by a great Majority.

Some Persons being uneasy at the Choice of these Burgesses, resolved to attempt setting aside their Election, and an Information in Nature of a Writ was brought against Bell, as well as against several of the new Burgesses.

The Allegations were, that the Mayor, at the Swearing of Bell, had no Casting-Vote, and consequently Bell was not legally sworn a Common-Council-Member in 1733, and that he being one of those Burgesses who proposed the New Burgesses at the Common-Council in 1730, he had thereby forfeited his Right to be a Burgess, and the Mayor's Casting Vote could be set aside, the Election of the said Burgesses was void; and a Writ was thereupon being tried before Mr. Justice Lee at Nisi Prius, by a special Jury of the chief Gentlemen of the County of Middlesex, a Verdict was given for the Defendant Bell, that the Election was good, and Costs were allowed him; and the other Informations brought against some of the new Burgesses were also dismissed, and a Verdict having been given in his favour, the said Bell continued to act as Mayor, and as a Common-Council-Member.

After the said Judgment the said Bell, and the new Burgesses have acted in a Corporation ever since, and Bell was elected Mayor, at Westminster, 1733. Now in order to the Colon to the Petition of Thomas Ainslie and Benjamin Hall, Esqrs. in order to the Election of the sitting Members, the latter End of last March, a Writ was made at the Court of King's Bench, for a new Trial on the above mentioned Petition, and a Verdict was given for the Plaintiff, and the Court upon due Consideration of the Motion (Mr. Justice being then present) unanimously adjudged, there was no Ground for a new Trial.

This being a new state of the Facts as to the Trial at Law, when it is considered, that the said Bell was not legally sworn a Common-Council-Member in 1733, and that he being one of those Burgesses who proposed the New Burgesses at the Common-Council in 1730, he had thereby forfeited his Right to be a Burgess, and the Mayor's Casting Vote could be set aside, the Election of the said Burgesses was void; and a Writ was thereupon being tried before Mr. Justice Lee at Nisi Prius, by a special Jury of the chief Gentlemen of the County of Middlesex, a Verdict was given for the Defendant Bell, that the Election was good, and Costs were allowed him; and the other Informations brought against some of the new Burgesses were also dismissed, and a Verdict having been given in his favour, the said Bell continued to act as Mayor, and as a Common-Council-Member.

Members to serve in Parliament for this Borough, to be in the Mayor and Burgesses of the said Borough only, which by the Act of the 2d of the present Majesty, "For the more Effectual preventing Bribery and Corruption," is inviolable, and that the Point they go upon in the Petition is, that the sitting Members were Unduly elected, by Persons who had no Right to Vote; it must appear, that this Petition is calculated with no other View, than to direct the said Bell of the Office of Common-Council-Member, continued to him by a return Judgment of a Court of Law, to deprive the Mayor of his Right of having a Casting-Vote, which has been adjudged to be in him by a Verdict founded on Evidence upon Oath, and to set aside the Election of the Burgesses Chose in 1730, (the Validity of which, the Informations were brought, they would not venture to say) in hopes to be able the present Election of the sitting Members.

